IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 18150 OF 2007

Dated : August 28, 2007

Between:

K.Narayana and others

Petitioners

AND

The Government of Andhra Pradesh,
Rep. By its Secretary to Government,
Irrigation & CAD Department,
Secretariat, Hyderabad and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 18150 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records

relating to the order dated 06.08.2007 passed in O.A. No. 558 of 2006 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, and the impugned Memo No. 8477/Ser.1.2/2006-9 dated 20.01.2007 and to quash the same in respect of the petitioners herein and consequently to direct the respondents to consider the case of the petitioners for promotion to the post of Deputy Executive Engineers by taking into account their initial date of appointment, with all consequential benefits, the petitioners filed this writ petition.

The petitioners herein filed the above O.A. before the Tribunal assailing Memo No. 8477/Ser.1.2/2006-9 dated 20.01.2007 which seeks to alter the commencement of probation of the petitioners two years anterior to the date of passing of the Departmental Test.

The facts, in brief, are that the petitioners were appointed as Assistant Executive Engineers on being selected by the A.P. Public Service Commission in the year 1985 and subsequent thereto. It is the case of the petitioners that they were not informed of the condition of passing Departmental tests during the period of probation. It is also their case that their probation commenced in the year 1992 and they passed the departmental tests in the year 1995 and their probation was also declared from the date of passing the Departmental tests. But the Government issued the impugned memo on 20.1.2007

invoking Rule 16(h) of the A.P. State and Subordinate Service Rules, 1996 read with Rule 6 of the A.P. Departmental Test Rules, 1965, altering the date of commencement of probation two years anterior to the date of passing of the Departmental tests. Hence, this writ petition.

It is contended on behalf of the petitioners that Rule 16(h) is applicable only when the period of probation is extended by the Government, in relaxation to the Rules, and it is not applicable to the petitioners' cadre and, therefore, the impugned Memo issued by the Government is illegal. It is also contended on behalf of the petitioners that the Tribunal without deciding the said issue, dismissed the O.A. clubbing the same with batch of other O.As. involving the issue of provisional seniority list and dismissed the O.A. on erroneous grounds inasmuch as the issue involved in the instant O.A. has nothing to do with the seniority.

Evidently, the question that requires consideration by the Tribunal is whether the respondents are empowered to alter the commencement of probation of the petitioners two years anterior to the date of passing of the Departmental Test and, for that matter, whether the impugned circular can sustain, inasmuch as the period of probation of the petitioners is not extended by the Government.

The Tribunal did not advert to this aspect of the issue and went on the premise of deciding the issue on seniority, clubbing the instant O.A. with other batch of O.As. relating to provisional seniority, which has nothing to do with the lis in this O.A. Prima facie, it is the contention of the petitioners that the impugned Memo dated 20.01.2007 is not applicable to them inasmuch as under Rule 8(c) of the A.P. Engineering Service Rules, any Assistant Executive Engineer, on probation shall not be discharged for failure to pass the test within the period of probation, but his probation shall be extended and his increments shall be stopped till he passes the test and in such an event, his probation will be extended automatically. It is also the contention of the petitioners that the respondents are not empowered to fix the revised date of commencement of probation, extending their probation, inasmuch as even the impugned circular is conspicuously silent about any provision either in the A.P. State and Subordinate Service Rules, 1996 or the A.P. Departmental Test Rules, 1965, excepting Rule 16(h), which, according to the petitioners, can be invoked only in case where the Government extended the probation.

In view of these submissions, without adverting to the merits or otherwise of the contentious issues, we feel it appropriate to set aside the order dated 06.08.2007 passed in O.A. No. 558 of 2006 by the Andhra Pradesh

Administrative Tribunal, Hyderabad, to the extent of petitioners.

Consequently, the Writ Petition is allowed and matter is remanded to the Tribunal for consideration afresh with a direction to dispose of the same within a period of three months from the date of receipt of a copy of this order, in the light of the above observations. No order as to costs.

_____

T.MEENA KUMARI, J.

_____

G.CHANDRAIAH, J.

August 28, 2007
MAS